



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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David K. Paylor
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Michael P. Murphy
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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO QUALITY CULVERT, INC. Registration No. 52300

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Quality Culvert, Inc., for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Facility" means the Quality Culvert, Inc. concrete pipe and corrugated plastic pipe manufacturing facility, located at 34 Three Creek Drive in Greenville County, Virginia.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
8. "Permit" means a New Source Review permit to modify and operate a concrete pipe and corrugated plastic pipe manufacturing facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to Quality Culvert, Inc. on November 25, 2009.
9. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
10. "Quality Culvert" means Quality Culvert, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Quality Culvert, Inc. is a "person" within the meaning of Va. Code § 10.1-1300.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Quality Culvert owns and operates a concrete pipe and corrugated plastic pipe manufacturing facility located at 34 Three Creek Drive in Greenville County, Virginia.
2. On October 7, 2009, Department staff conducted a Partial Compliance Evaluation (inspection) of the Facility for compliance with the requirements of the Virginia Air Pollution Control Law, and the Regulations. Based on the inspection and follow-up information, Department staff made the following observation:
 - a. Quality Culvert constructed and operated the Facility without a permit. A representative of Quality Culvert informed DEQ staff during the inspection that construction of the Facility began on March 15, 2009 and that the Facility began conducting trial runs on August 15, 2009.

3. 9 VAC 5-80-1120(A) states "No owner or other person shall begin actual construction, reconstruction or modification of any stationary source without first obtaining from the board a permit to construct and operate or to modify and operate the source."
4. 9 VAC 5-80-1210 (D) requires that "Any owner who constructs or operates a new or modified source not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a new or modified source subject to this article who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section."
5. 9 VAC 5-50-50 (A) requires that "Any owner of a new or modified source subject to the provisions of this chapter shall provide written notifications to the board of the following:
 1. The date of commencement of construction, reconstruction or modification of a new or modified source postmarked no later than 30 days after such date.
 2. The anticipated date of initial startup of a new or modified source postmarked not more than 60 days nor less than 30 days prior to such date.
 3. The actual date of initial startup of a new or modified source postmarked within 15 days after such date..."
6. On November 10, 2009, based on the inspection and follow-up information, the Department issued Notice of Violation No. 09-10-PRO-401 to the Quality Culvert for the violation described in paragraph C.2 and C.3, above.
7. On November 25, 2009, the Department issued the Permit to Quality Culvert.
8. On December 8, 2009, Department staff discussed the violation with a representative of Quality Culvert.
9. Based on the results of the inspection and subsequent information, the Board concludes that Quality Culvert has violated 9 VAC 5-80-1120(A), 9 VAC 5-80-1210 (D), and 9 VAC 5-50-50 (A) as described in paragraphs C.2 through C.5, above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Quality Culvert, and Quality Culvert agrees to pay a civil charge of **\$13,897** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Quality Culvert shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Quality Culvert for good cause shown by Quality Culvert, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Quality Culvert admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Quality Culvert consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Quality Culvert declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Quality Culvert to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the

Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Quality Culvert shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Quality Culvert shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Quality Culvert shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

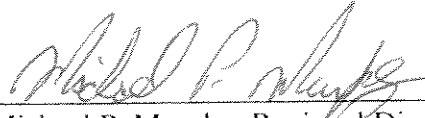
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the Quality Culvert intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Quality Culvert. Nevertheless, Quality Culvert agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. Quality Culvert petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Quality Culvert.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Quality Culvert from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Quality Culvert and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Quality Culvert certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Quality Culvert to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Quality Culvert.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Quality Culvert, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 17th day of August, 2010.



Michael P. Murphy, Regional Director
Department of Environmental Quality

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Quality Culvert, Inc. voluntarily agrees to the issuance of this Order.

Date: 8/11/10 By: Kerry Laabs Risk Manager
(Person) (Title)
Quality Culvert, Inc.

Commonwealth of ~~Virginia~~ Wisconsin
City/County of Lincoln

The foregoing document was signed and acknowledged before me this 11 day of
August, 2010, by KERRY LAABS who is
RISK MGR of Quality Culvert, Inc., on behalf of the corporation.

[Signature]
Notary Public

Registration No. _____

My commission expires: 9/29/13

Notary seal: